

No. 13-20-00355-CV

Court of Appeals, Thirteenth District
Corpus Christi – Edinburg, Texas

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Hidalgo County Water Improvement District No. 3
Appellant

KATHY S. MILLS
Clerk

vs.

Hidalgo County Irrigation District No. 1
Appellee

Appeal from County Court at Law No. 1
Hidalgo County, Texas
Cause No. CCD-0517-D

FIRST SUPPLEMENTAL RESPONSE TO
EMERGENCY MOTION FOR TEMPORARY ORDERS

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TO THE HONORABLE COURT OF APPEALS:

Condemnee-Appellee Hidalgo County Irrigation District No.1 (District 1) files this First Supplemental Response to Condemnor-Appellant Hidalgo County Water Improvement District No. 3's (District 3) Emergency Motion for Temporary Orders. District 1 respectfully shows the following:

I. Introduction.

The Court should deny District 3's request for immediate possession of the property at issue pending this appeal. District 3 provides no basis for granting affirmative post-judgment relief by "suspending" a judgment that dismissed the underlying dispute for lack of subject-matter jurisdiction. Moreover, District 1 has established that the harm to District 3 will be minimal relative to the tremendous harm that District 1 and its customers will suffer by allowing District 3 to obtain possession. *See infra* § II. Alternatively, if the Court decides a writ of possession is available post-judgment, the Court should remand that issue to the trial court so that court can decide in the first instance whether the judgment should be superseded at all and whether counter-supersedeas must be posted by District 1. *See infra* § III.

II. The Court should deny the request for temporary relief.

To date, the only decision from the trial court on this matter is that it cannot grant or deny a request for immediate possession because it has determined that it

lacks subject-matter jurisdiction. *See* D.1’s Resp. § II. The trial court is correct, and this Court should thus deny District 3’s motion. *See id.* A dismissal for want of jurisdiction “merely places the parties in the position that they were in before the court’s jurisdiction was invoked.” *State v. Schless*, 815 S.W.2d 373, 376 (Tex. App.—Austin 1991, orig. proceeding) (quoting *Crofts v. Court of Civil Appeals*, 362 S.W.2d 101, 104 (Tex. 1962) (orig. proceeding)). When a case lacks jurisdiction, all orders in the case are set aside, and the case is dismissed. *See Garland v. Louton*, 691 S.W.2d 603, 604–05 (Tex. 1985) (explaining that when case becomes moot, “the appellate court must dismiss the cause not merely dismiss the appeal”); *Martin v. Com. Standard Fire & Marine Ins. Co.*, 505 S.W.2d 799, 799–800 (Tex. 1974) (per curiam) (applying same principle to lack of subject-matter jurisdiction generally); *see also Morath v. Lewis*, 601 S.W.3d 785, 789–92 (Tex. 2020) (per curiam) (reaffirming rule that all prior orders are set aside upon finding of lack of jurisdiction). Without jurisdiction, a court cannot grant a writ of possession in an eminent domain case. *See Schless*, 815 S.W.2d at 376 n.3 (noting that dismissal for want of jurisdiction annulled prior order granting writ of possession); *infra* § III (discussing *Schless*).

Since District 3 cannot obtain possession of the property by suspending the judgment, the Court should deny District 3’s motion. Additionally, to the extent

District 3 suggests that the Court should award possession to District 3 as a temporary order regardless of whether District 3 can suspend the judgment, the Court should deny that request as well. District 3 has failed to show that it will suffer irreparable harm if it does not have possession during this appeal. To the contrary, District 1 and its customers will suffer irreparable harm if District 3 is allowed to have possession and damage District 1's pipeline. *See* D.1's Resp. § V.

III. Alternatively, the Court should remand this issue to the trial court to consider whether to suspend the judgment and whether counter-supersedeas is required.

If this jurisdictional dismissal judgment is subject to being suspended pending appeal, the trial court has discretion to decide whether to allow it to be suspended in the first instance. *See* Tex. R. App. P. 24.2(a)(3). Since the trial court has not yet ruled on this issue, the Court should remand this question to the trial court and maintain possession with District 1 while that issue is resolved.

Rule 24.2(a)(3) provides:

Other Judgment.—When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. *But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief*

granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

Tex. R. App. P. 24.2(a)(3) (emphasis added).

A judgment dismissing an eminent domain suit for want of jurisdiction is a judgment “for something other than money or an interest in property.” *State v. Schless*, 815 S.W.2d 373, 376 (Tex. App.—Austin 1991, orig. proceeding) (construing substantially identical predecessor rule). As a result, if the judgment can be suspended at all, Rule 24.2(a)(3) applies, and the trial court has discretion to “decline to permit the judgment to be superseded.” Tex. R. App. P. 24.2(a)(3). Further, by statute, District 1 cannot be required to post counter-supersedeas security. *See* Tex. Civ. Prac. & Rem. Code Ann. § 6.003(b)(2) (exempting irrigation districts from appeal bond requirements). Alternatively, since District 1 is a governmental entity, the trial court has discretion to decline to suspend the judgment without security. *See* Tex. R. App. P. 24.2(a)(5).¹ Even if counter-supersedeas

¹ Rule 24.2(a)(5) provides:

For a Governmental Entity.—When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the

security is required here, however, the trial court must determine the amount after a hearing, which it has not yet held. *See* Tex. R. App. P. 24.2(a)(3) (requiring trial court to order counter-supersedeas in “an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition,” that the jurisdictional dismissal was improper).

The Texas Supreme Court has confirmed that when Rule 24.2(a)(3) applies, the trial court has discretion to decline to suspend the judgment even if the appellant is a governmental entity with a statutory right to automatically supersede a judgment without providing supersedeas security. *See In re State Bd. for Educator Certification*, 452 S.W.3d 802, 802–09 (Tex. 2014) (orig. proceeding). “Government’s right to supersede a judgment may be automatic, but it is not absolute.” *Id.* at 803. “[A] trial court has discretion to deny any party—even the State—the right to supersede a non-money, non-property judgment.” *Id.*

The Legislature later enacted a statute requiring Rule 24.2(a)(3) to be amended, and the rule now contains an exception that applies in some circumstances when the judgment debtor is “the state, a department of this state, or the head of a

judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

department of this state.” *See* Tex. Gov’t Code Ann. § 22.004(i); Tex. R. App. P. 24.2(a)(3). This exception plainly does not apply to District 3, which is neither the State, a department of the State, nor the head of a department of the State. *See* Tex. R. App. P. 24.2(a)(3). In addition to the fact that District 3 does not fit the plain language of the exception, the statute calling for this amendment of Rule 24.2(a)(3) distinguishes water districts from departments of the State. Government Code Section 22.004(i) requires the amended rule to exempt appellants “under Section 6.001(b)(1), (2), or (3) Civil Practice and Remedies Code” from counter-supersedeas in certain circumstances. Section 6.001(b) lists several types of governmental entities and considers, for example, “a county of this state” to be different from “a department of this state,” yet the Legislature chose not to include counties in the new exemption from counter-supersedeas. As pertinent here, water districts are covered separately by an entirely different section in Section 6.003(b), which confirms that water districts like District 3 are not “departments of the state” for purposes of Rule 24.2(a)(3).

This Court reached the same decision as *In re State Board* in the eminent domain context about 25 years earlier. In *Westergren*, the trial court issued a permanent injunction favoring the condemnee and then declined to suspend that injunction pending the appeal. *City of Robstown v. Westergren*, 774 S.W.2d 739,

739 (Tex. App.—Corpus Christi 1989, orig. proceeding). The condemnor filed a petition for writ of prohibition arguing, like District 3 does here, that it should be able to suspend the injunction pending appeal because it was entitled by statute to automatically supersede judgments without bond. *See id.* at 739–40. This Court rejected the condemnor’s argument and held that the trial court had discretion to decline to suspend the injunction pending appeal under the substantially identical predecessor to Rule 24.2(a)(3). *See id.* at 740–41.²

The Austin Court of Appeals specifically relied on *Westergren* in circumstances remarkably similar to this case. In *Schless*, the trial court dismissed an eminent domain suit for want of jurisdiction, and the condemnor appealed that ruling. *State v. Schless*, 815 S.W.2d 373, 374 (Tex. App.—Austin 1991, orig. proceeding). The trial court then overruled the condemnor’s motion to supersede the judgment and grant the condemnor possession of the property during the appeal. *Id.*

² In 2010, this Court questioned whether it had made the correct decision in *Westergren*. *See Cascos v. Cameron Cnty. Att’y*, 319 S.W.3d 205, 217 (Tex. App.—Corpus Christi 2010, no pet. & orig. proceeding). *Cascos* did not overrule *Westergren*, and in any event, the Texas Supreme Court has since made clear that *Westergren* was correct. *In re State Board* effectively overruled *Cascos* to the extent *Cascos* suggested that the trial court lacks discretion to decline to suspend a judgment pending appeal under Rule 24.2(a)(3). *See In re State Bd. for Educator Certification*, 452 S.W.3d 802, 805 n.20 (Tex. 2014) (orig. proceeding) (citing *Cascos* specifically as a case that erroneously suggested that the government’s right to supersede a judgment is absolute); *see also In re State Bd. for Educator Certification*, 411 S.W.3d 576, 580–81 (Tex. App.—Austin 2013, orig. proceeding [mand. denied]) (Jones, J., concurring) (arguing that “*Cascos* was wrongly analyzed and wrongly decided” under supreme court precedent).

at 374–75. The condemnor sought mandamus on the basis that it was statutorily entitled to automatically suspend the judgment pending appeal. *Id.* The court of appeals held that Rule 24.2(a)(3)’s predecessor applied to this judgment. *Id.* at 375–76. As a result, the trial court had discretion to decline to suspend its judgment and effectively allow the condemnees to retain possession during the appeal. *Id.*

If the Court finds that the judgment can be superseded, the Court should remand this issue to the trial court to give that court the opportunity to decide (1) whether to suspend the judgment and (2) whether to require counter-supersedeas. *See* Tex. R. App. P. 24.2(a)(3), 24.2(a)(5). The trial court’s current decision is that it lacks jurisdiction to consider whether to grant or deny a writ of possession to District 3 pending the appeal. As a result, the trial court has not yet ruled on the issue of whether the judgment should be suspended. The trial court will need to weigh the evidence to make this determination. *See id.*

Further, District 1 has not had an opportunity to make and develop this argument in the trial court due to District 3 filing their motion as an “emergency” and requesting a ruling without a hearing. The trial court held a conference, not a hearing, two days after District 3 filed its motion and then declined to rule on District 3’s motion before District 1 had an opportunity to file a response. *See* D.1’s Resp.

§ I (discussing how proceedings resulted in District 1 not having an opportunity to file a brief in response).

As a result, if the Court determines that the trial court's judgment can be suspended pending appeal, the Court should remand that issue to the trial court. Moreover, the Court should decline to take possession of the property away from District 1 until the trial court has resolved that issue.

Along those lines, to the extent District 3 suggests this Court should grant a writ of possession even if District 3 cannot suspend the trial court's judgment, this Court should deny that request as stated above. *See supra* § II. If this Court is inclined to entertain that request further, however, the Court still would need to remand the issue to the trial court to consider factual disputes as to the potential impact and harms that could be caused by either party retaining possession. *See Tex. R. App. P. 24.4(d)* ("The appellate court may remand to the trial court for entry of findings of fact or for the taking of evidence.").

IV. Conclusion

There is no basis to award District 3 possession of the property pending this appeal. The trial court properly ruled that it lacks jurisdiction to award District 3 affirmative relief in this case, and even if that were not the case, District 3 does not have an absolute right to suspend this judgment pending this appeal. This issue is of

critical importance to District 1 and its customers, including a majority of the residents of the City of Edinburg. *See* Posadas Affid. ¶ 1 (attached to District 1's original response to District 3's motion). The Court should deny the motion or, alternatively, remand the issue to the trial court to be properly developed as required by the rules.

Prayer

District 1 respectfully requests that the Court deny District 3's motion. Alternatively, District 1 requests that the Court remand the issue of whether to suspend the judgment to the trial court. If the Court remands the issue to the trial court, District 1 requests that the Court decline to award the property to District 3 during those trial court proceedings. District 1 also requests such other and further relief at law or in equity to which it may be entitled.

Respectfully submitted,

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I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served on the following counsel of record on September 8, 2020, as follows:

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